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Russell E. Fowler II  
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Signature

July 2, 2008  
Date of Signature

|     |                   |   |
|-----|-------------------|---|
| Re: | Application of:   | Keenan, Jr. et al.  |
|     | Serial No.:       | 10/770,351  |
|     | Filed:            | February 2, 2004  |
|     | For:              | Method and Device for Upgrading a Building Control System |
|     | Group Art Unit:   | 2174  |
|     | Confirmation No.: | 7660  |
|     | Examiner:         | Steven Paul Sax   |
|     | Our Docket No.:   | 2003P01392US01 (1867-0042)                                |

**RESPONSE TO NOTICE OF NON-COMPLIANT**

**APPEAL BRIEF**

Sir:

In response to the Notice of Non-Compliant Appeal Brief dated June 2, 2008 for the above-identified patent application, please find below the replacement section that contains the complete Status of Amendments section.

#### **(4) STATUS OF AMENDMENTS**

Applicants filed a Response to Office Action dated May 11, 2007 ("First Response") responsive to an Office Action dated January 11, 2007. The First Response included an amendment to claims 1 and 6, cancellation of claims 10-15, and a new claim 17. These amendments were entered by the examiner. A Final Office Action ("First Final Action") dated August 7, 2007 was designated by the Examiner to be responsive to the First Response. On November 5, 2007, attorney Russell E. Fowler II on behalf of the applicants and Examiner Steven P. Sax held a telephone interview ("Interview") which resulted in a new Office Action and deadline for response. The new Final Office Action ("Second Final Action") dated November 16, 2007 responsive to the Interview. Applicants filed a Response to Final Office Action ("Final Response") on January 11, 2008 that was responsive to the Second Final Action. The Final Response included an amendment to claim 17 to correct a typographical error and place the claim in better condition for allowance. The amendment to claim 17 was entered by the examiner. The Examiner then issued an Advisory Action dated February 8, 2008 ("Advisory Action") because the Final Response failed to bring the application into allowance. Applicants filed a Notice of Appeal dated March 17, 2008 ("Notice of Appeal") in response to the Advisory Action.

For all of the reasons set forth above and in the May 19, 2008 Brief on Appeal, it is respectfully submitted that claims 1-9 and 16-17 are not unpatentably obvious over U.S. Patent No. 7,124,397 in view of U.S. Patent No. 6,922,558. As a consequence, the Board of Appeals is respectfully requested to reverse the rejection of these claims.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Russ Fowler", with a long horizontal flourish extending to the right.

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